

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

JOEL M. RAMOS-PEREZ

Plaintiff

vs

CIVIL 11-1256CCC

NATIONAL LIFE INSURANCE COMPANY;  
WILLIAM HORBATT, his wife SHIRLEY  
HORBATT, and the conjugal legal  
partnership composed by them; INSURANCE  
COMPANY XYZ

Defendants

NATIONAL LIFE INSURANCE COMPANY

Cross-Claimant

vs

WILLIAM HORBATT, his wife SHIRLEY  
HORBATT, and the conjugal legal  
partnership composed by them

Cross-Defendants

**OPINION AND ORDER**

Before the Court is defendant National Life Insurance Company's (National) Motions to Compel Dr. Rolando Irizarry-Báez (**docket entries 28 and 30**), one of plaintiff's treating physicians, to attend a deposition as a fact witness.<sup>1</sup> Although defendant tendered the \$40.00 witness fee plus an allowance for mileage for the doctor's appearance at the deposition, as mandated by 28 U.S.C. § 1821, Dr. Irizarry's secretary informed that he does not attend depositions. No opposition to the motions or a motion for protective order has been filed with regard to Irizarry's testimony. Pursuant to Federal Rule of Civil Procedure 45(a)(2)(B), if a witness refuses to give deposition testimony, this Court may issue a subpoena to compel him to attend a deposition in this district.

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<sup>1</sup>National having filed an Information Motion (**docket entry 32**) which is NOTED, informing the Court that Dr. Díaz attended his deposition, the Motion to Compel his attendance (**docket entry 27**) is MOOT.

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There being no reason for Irizarry's refusal to be deposed, the motions to compel (**docket entries 28 and 30**) are GRANTED. Accordingly, the Clerk of Court shall issue a subpoena to compel Dr. Rolando Irizarry's attendance at his deposition, to be held no later than February 3, 2012. Pursuant to Fed. R. Civ. P. 45(e), this Court may hold Irizarry in contempt if, without adequate excuse, he fails to obey the subpoena. Irizarry shall notify movants within 24 hours of service of the subpoena if he has a legitimate excuse to change to the setting. Otherwise, such excuse will be waived. Any agreed upon change in the date for the deposition must fall within the allowed parameters.

SO ORDERED.

At San Juan, Puerto Rico, on January 18, 2012.

S/CARMEN CONSUELO CEREZO  
United States District Judge